

Z.C. Case No. 04-33A
Map and Text Amendments
Inclusionary Zoning Overlay District

Hearing No. 2 – Historic District Issues
Thursday, October 19, 2006, @ 6:30 P.M.

**Office of Zoning Hearing Room
441 4th Street, N.W., Suite 220-South
Washington, D.C. 20001**

The public hearings advertised in this notice will consider the proposal of the Office of Planning to establish a new overlay district, to be known as the Inclusionary Zoning (IZ) Overlay District. The proposed overlay would include all properties zoned R-3 to R-5-D; C-1 to C-4; SP-1 and SP-2; CR; and W-1 to W-3, unless located within the Downtown Development District (DD) or a Transferable Development Rights (TDR) Receiving Zone.

New residential developments of 10 units or more units, and existing residential developments with 10 or more units undergoing substantial rehabilitation¹ located within those areas would be subject to the Inclusionary Zoning Program established by in Zoning Commission Order 04-33. The order is also published in this edition of the *D.C. Register* and the text of the final rules establishing the IZ Program is appended to this notice.

Properties subject to the program will be required to devote a portion of their gross floor area for workforce housing, but are permitted to construct up to 20% more gross floor area than allowed under matter of right zoning. The regulations grant flexibility with minimum lot width and area in R-3 and R-4 districts; and lot occupancy and height limitations in the C-2-A to C-2-C, SP-1 and SP-2; CR; and W-1 to W-3 districts to accommodate the additional density. The program will not become effective until after the completion of this proceeding and until Council legislation implementing the program becomes effective.

¹ Specifically, the program would apply to existing development with ten or more units “for which a new addition will increase the gross floor area of the entire development by fifty percent (50%) or more” (11 DCMR § 2602.1 (c) (iii)).

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In addition to the creation of the new overlay, the Office of Planning recommended that text changes be made to the Reed Cook and Uptown Arts-Mixed Use [Arts] Overlay Districts (11 DCMR Chapters 14 and 19) to delete existing voluntary affordable housing incentives and replace them with the mandatory IZ set-aside requirements and bonus density allowance. Specific text accomplishing this change will appear in any notice of proposed rulemaking authorized by the Commission.

The Zoning Commission, at its public meeting of July 10, 2006, set down the proposed map and text changes for hearing. The Commission directed that the setdown proposal be considered in two parts: with the first hearing (October 5, 2006) focusing on potentially affected areas that are not included in historic districts, and the second hearing (October 23, 2006) considering the impact of applying the Inclusionary Zoning Program to historic districts within the affected zones.

The Commission also waived the posting requirements that apply to map amendments and indicated that the setdown rule (11 DCMR § 3202.5) would not apply.

The public hearing on this case will be conducted in accordance with the provisions of § 3021 of the District of Columbia Municipal Regulations, Title 11, Zoning. Pursuant to § 3020, the Commission will impose time limits on testimony presented to it at the public hearing.

All individuals, organizations, or associations wishing to testify in this case should file their intention to testify in writing and indicate the hearing date on which they will appear. Written statements, in lieu of personal appearances or oral presentations, may be submitted for inclusion in the record.

Information responsive to this notice should be forwarded to the Director, Office of Zoning, Suite 210, 441 4th Street, N.W., Washington, D.C. 20001. **FOR FURTHER INFORMATION, YOU MAY CONTACT THE OFFICE OF ZONING AT (202) 727-6311.**

CAROL J. MITTEN, ANTHONY J. HOOD, GREGORY N. JEFFRIES, JOHN G. PARSONS, AND MICHAEL G. TURNBULL, FAIA, ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA, BY JERRILY R. KRESS, FAIA, DIRECTOR, AND BY SHARON S. SCHELLIN, SECRETARY TO THE ZONING COMMISSION.

APPENDIX TO HEARING NOTICE FOR ZC CASE 04-33A

TEXT OF FINAL INCLUSIONARY ZONING RULES

CHAPTER 26 INCLUSIONARY ZONING

| | |
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| 2600 | General Provisions |
| 2601 | Definitions |
| 2602 | Applicability |
| 2603 | Set-Aside Requirements |
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| 2605 | Development Standards |
| 2606 | Exceptions from Compliance |
| 2607 | Off-site Compliance |
| 2608 | Applicability Date |

2600 GENERAL PROVISIONS

- 2600.1 This Chapter establishes an Inclusionary Zoning Program that furthers the Housing Element of the Comprehensive Plan by increasing the amount and expanding the geographic distribution of adequate, affordable housing available to current and future residents.
- 2600.2 It is the intent of the Zoning Commission to promulgate only such regulations as are necessary to establish the minimum obligations of property owners applying for building permits or certificates of occupancy under an Inclusionary Zoning Program. All other aspects of the program, including the setting of maximum purchase prices and rents, the minimum sizes of the units, the selection and obligations of eligible households, and the establishment of enforcement mechanisms such as covenants and certifications shall be as determined by the Council and Mayor of the District of Columbia.
- 2600.3 The most important general purposes of the Inclusionary Zoning Program include the following:
- (a) To utilize the skills and abilities of private developers to produce quality affordable housing;
 - (b) To leverage private development, combined where appropriate with zoning density increases, to produce affordable housing throughout the District of Columbia;
 - (c) To mitigate the impact of market-rate residential development on the availability and cost of housing available and affordable to low- and moderate-income households;

- (d) To increase the production of affordable housing units throughout the District to meet existing and anticipated housing and employment needs;
- (e) To provide for a full range of housing choices throughout the District for households of all incomes, sizes, and age ranges to preserve diversity and to ensure the benefits of economic integration for the residents of the District;
- (f) To stabilize the overall burden of housing costs on low- and moderate-income households;
- (g) To create a stock of housing that will be affordable to low- and moderate-income residents over a long term; and
- (h) To make homeownership opportunities available to low- and moderate-income residents.

2601

DEFINITIONS

2601.1

When used in the Chapter, the following terms and phrases shall have the meanings ascribed:

Achievable bonus density - The amount of the bonus density permitted under § 2604 that potentially may be utilized within a particular inclusionary development, notwithstanding constraints resulting from the physical characteristics of the land or restrictions imposed by District or federal laws and agencies.

The Act – [NAME OF THE LEGISLATION ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA TO IMPLEMENT THE PROVISIONS OF THIS CHAPTER]. References to the Act include any Mayor’s Order, agency rule, or other administrative issuance promulgated pursuant to that legislation.

Development, inclusionary– a development subject to the provisions of this Chapter pursuant to § 2602.1.

Development, off-site – a development that accounts for all or part of an inclusionary development’s requirements under this Chapter, if approved pursuant to § 2607.

Eligible household – one or more persons certified by the Mayor as being a low- or moderate-income household pursuant to the Act.

Inclusionary unit – a unit set aside for sale or rental to an eligible low- and moderate-income household as required by this Chapter or by order of the Board of Zoning Adjustment pursuant to § 2607.

Inclusionary Zoning Overlay – the overlay district established by Zoning Commission Order __-__, published in the _____, 200_ edition of the *D.C. Register*.

Low-income household – a household of one or more individuals with a total annual income adjusted for household size equal to less than fifty percent (50%) of the Metropolitan Statistical Area median as certified by the Mayor pursuant to the Act.

Mayor – the Mayor of the District of Columbia, the Director of the agency or agencies delegated the authority to implement the Act, or the agency official or officials re-delegated such authority.

Moderate-income household - a household of one or more individuals with a total annual income adjusted for household size equal to between fifty percent (50%) and eighty percent (80%) of the Metropolitan Statistical Area median as certified by the Mayor pursuant to the Act.

Purchase/rental schedule - the most current schedule, published by the Mayor pursuant to the Act, establishing the maximum purchase prices and rents for inclusionary units.

2602 APPLICABILITY

2602.1 Except as provided in § 2602.3, the requirements and incentives of this Chapter shall apply to developments that:

- (a) Are mapped within the Inclusionary Zoning Overlay; and
- (b) Have ten (10) or more dwelling units (including off-site inclusionary units); and
- (c) Are either:
 - (i) New multiple-dwellings;
 - (ii) New one-family dwellings, row dwellings, or flats constructed concurrently or in phases on contiguous lots or lots divided by an alley, if such lots were under common ownership at the time of construction; or
 - (iii) An existing development described in subparagraph (i) or (ii) for which a new addition will increase the gross floor area of the entire development by fifty percent (50%) or more.

2602.2 A new development with less than ten (10) dwelling units shall become subject to this Chapter upon the filing of an application for a building permit to add one or more dwelling units to the development within a two-year period after the

issuance of the last certificate of occupancy, if the construction for which application has been filed would result in the development having ten (10) or more dwelling units.

2602.3 This Chapter shall not apply to hotels, motels, inns, dormitories, housing developed by or on behalf of a local college or university exclusively for its students, faculty or staff, housing that is owned or leased by foreign missions exclusively for diplomatic staff, rooming houses, boarding houses, community-based residential facilities, single room occupancy developments, or developments in R-1, R-2 and C-4 Districts.

2602.4 Except as provided in §§ 2602.5, 2603.5 and 2607.1 (c), or the Act, all inclusionary units created pursuant to this Chapter shall be leased or sold only to eligible households for so long as the inclusionary development exists.

2602.5 An owner/occupant of an inclusionary unit may sell the unit at a price greater than the maximum permitted under the purchase/rental schedule if the price is offered by the Mayor.

2603 SET-ASIDE REQUIREMENTS

2603.1 An inclusionary development for which the primary method of construction does not employ steel and concrete frame structure located in an R-3 through an R-5-B District or in a C-1, C-2-A, W-0 or W-1 District shall devote the greater of 10% of its matter-of-right density or 75% of its achievable bonus density to inclusionary units.

2603.2 An inclusionary development of steel and concrete frame construction located in the zone districts stated in § 2603.1 or any development located in a C-2-B, C-3, CR, R-5-C, R-5-D, R-5-E, SP, W-2 or W-3 District shall devote the greater of 8% of its matter-of-right density or 50% of its achievable bonus density to inclusionary units.

2603.3 Inclusionary developments located in R-3 through R-5-E, C-1, C-2-A, W-0 and W-1 Districts shall set aside 50% of inclusionary units for eligible low-income households and 50% of inclusionary units for eligible moderate-income households. The first inclusionary unit and each additional odd number unit shall be set aside for low-income households.

2603.4 Developments located in CR, C-2-B through C-3-C, W-2 through W-3, and SP Districts shall set aside 100% of inclusionary units for eligible moderate-income households.

2603.5 The Mayor or the District of Columbia Housing Authority shall have the right to purchase up to twenty-five percent (25%) of inclusionary units in a for-sale

inclusionary development in accordance with such procedures as are set forth in the Act.

2604 BONUS DENSITY

2604.1 Inclusionary developments subject to the provisions of this Chapter may construct up to twenty percent (20%) more gross floor area than permitted as a matter of right (“bonus density”), subject to all other zoning requirements (as may be modified herein) and the limitations established by the Act to Regulate the Height of Buildings in the District of Columbia, approved June 1, 1910 (36 Stat. 452; D.C. Official Code § 6-601.01, *et seq.* (2001 Ed.).

2604.2 Inclusionary developments in zoning districts listed in the chart below may use the following modifications to height and lot occupancy in order to achieve the bonus density:

| Base Zone | Matter-of-Right Zoning Constraints | | | IZ Zoning Modifications | |
|-----------|------------------------------------|----------------------|------------|-------------------------|---------------|
| | Lot Occupancy | Zoning Height (feet) | Zoning FAR | Lot Occupancy | Height (feet) |
| R-5-E | 75% | 90 | 6.00 | 90% | 90 |
| CR | 75% | 90 | 6.00 | 80% | 100 |
| C-2-A | 60% | 50 | 2.50 | 75% | 50 |
| C-2-B | 80% | 65 | 3.50 | 80% | 70 |
| C-2-C | 80% | 90 | 6.00 | 90% | 90 |
| C-3-A | 75% | 65 | 4.00 | 80% | 65 |
| W-1 | 80% | 40 | 2.50 | 80% | 50 |
| W-2 | 75% | 60 | 4.00 | 75% | 80 |
| W-3 | 75% | 90 | 6.00 | 80% | 100 |
| SP-1 | 80% | 65 | 4.00 | 80% | 70 |
| SP-2 | 80% | 90 | 6.00 | 90% | 90 |

2604.3 Inclusionary developments in R-3 and R-4 zoning districts may use the minimum lot dimensions as set forth in the following table:

| Base Zone | IZ Zoning Modifications | |
|-----------|-------------------------------|----------------------|
| | IZ Min Lot Area (square feet) | Min Lot Width (feet) |
| R-3 | 1,600 | 16.0 |
| R-4 | 1,500 | 15.0 |

2605 DEVELOPMENT STANDARDS

2605.1 A development that provides, pursuant to federal or other District housing programs, affordable dwelling units for sale or lease may count such units

towards the requirements of this Chapter, provided that all provisions of this Chapter and the Act are met.

- 2605.2 The proportion of studio, efficiency, and one-bedroom inclusionary units to all inclusionary units shall not exceed the proportion of market-rate studio, efficiency, and one-bedroom units to all market-rate units.
- 2605.3 All inclusionary units shall be comparable in exterior design, materials, and finishes to the market-rate units.
- 2605.4 The interior amenities of inclusionary units (such as finishes and appliances) shall be comparable to the market-rate units, but may be comprised of less expensive materials and equipment.
- 2605.5 All inclusionary units in an inclusionary development shall be constructed prior to or concurrently with the construction of market-rate units, except that in a phased development, the inclusionary units shall be constructed at a pace that is proportional with the construction of the market-rate units.
- 2605.6 Inclusionary units shall not be overly concentrated on any floor of a project.

2606 EXEMPTION FROM COMPLIANCE

- 2606.1 The Board of Zoning Adjustment shall reduce the requirements of § 2603 for each square foot of achievable bonus density that cannot be accessed due to:
- (a) Site conditions such as shape, slope, or other similar physical conditions or
 - (b) Development restrictions imposed on the property by District or federal government agencies.
- 2606.2 Applicants seeking relief under § 2606.1 (a) shall submit architectural plans and elevations studies demonstrating the impact of site conditions on achieving the maximum permitted bonus density.
- 2606.3 Applicants for relief under § 2606.1 (b) shall include with their application the written order that imposed the relevant development restriction and shall certify that the restriction was not in the original plans submitted by the applicant to the agency, but was either offered in response to the agency's concerns expressed on the record or was unilaterally imposed by the agency.

2607 OFF-SITE COMPLIANCE

- 2607.1 The Board of Zoning Adjustment is authorized to permit some or all of the set-aside requirements of § 2603 to be constructed off-site on property owned by the applicant upon proof, based upon a specific economic analysis, that compliance

would impose an economic hardship. Among the factors that may be considered by the BZA in determining the existence of economic hardship are:

- (a) Exceptionally high fees in condominium developments that cannot be reduced to levels affordable to eligible households;
- (b) The inclusion of expensive and specialized social or health services in a retirement housing development or a development that principally provides housing for the disabled, if such services are not severable from the provision of housing and render units in the development unaffordable to eligible households; or
- (c) For a rental development the owner of which wishes to change the property's use to one listed in § 2602.3, proof that continuation of the rental use is no longer economically feasible.

2607.2 An applicant who has demonstrated the existence of economic hardship shall further demonstrate that the off-site development:

- (a) Is located within the same census tract as the inclusionary development;
- (b) Consists of new construction for which no certificate of occupancy has been issued;
- (c) Is at a location suitable for residential development;
- (d) Has complied with or will comply with all on-site requirements of this Chapter as are applicable to it;
- (e) Has not received any development subsidies from federal or District government programs established to provide affordable housing; and
- (f) Will provide inclusionary units comparable in type to the market-rate units being created in their place, with gross floor areas of not less than 95% of the gross floor area of such market-rate units, and of a number no fewer than the number of units that would otherwise have been required on-site.

2607.3 The requirement of § 2607.2 (a) may be waived upon a showing that the applicant, after good faith efforts, was unable to locate properties within the same census tract or that the costs to purchase and develop available properties would render both the inclusionary and off-site projects economically infeasible.

2607.4 Inclusionary units constructed off-site shall not be counted toward any set-aside requirement separately applicable to the off-site development pursuant to § 2603.

2607.5 No order granting off-site compliance shall become effective until a covenant, found legally sufficient by the Office of the Attorney General, has been recorded in the land records of the District of Columbia between the owner of the off-site development and the Mayor.

2607.6 The covenant shall bind the owner and all future owners of the off-site development to:

- (a) Construct and reserve the number of inclusionary units allowed to be accounted for off-site, in accordance with the plans approved by the Board and the conditions of the Board's order;
- (b) Sell or rent, as applicable, such units in accordance with the provisions of this Chapter and the Act for so long as the off-site development remains in existence;
- (c) Neither apply for nor accept any development subsidies from federal or District government programs established to provide affordable housing;
- (d) Acknowledge that the owners are legally responsible for the set-aside requirement accepted as if the requirement had been imposed directly on the off-site development; and
- (e) Not request special exception or variance relief with respect to the obligations accepted or its own obligations under this Chapter.

2607.7 Upon the recordation of the covenant, the set-aside requirements permitted to be accounted off-site shall be deemed to be the legal obligation of the current and future owners of the off-site development. All dwelling units as are required to be reserved in the off-site development in accordance with the BZA order shall be deemed inclusionary units for the purposes of this Chapter and the Act.

2607.8 No application for a certificate of occupancy for a market-rate unit on the inclusionary development shall be granted unless construction of the off-site inclusionary units is progressing at a rate roughly proportional to the construction of the on-site market-rate units.

2608 APPLICABILITY DATE

2608.1 The provisions of this Chapter shall become effective following the issuance of the first purchase/rental schedule or the publication date in the *D.C. Register* of Zoning Commission Order ____, establishing the Inclusionary Zoning Overlay, whichever is the last to occur.